

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DELSIE E. BROOKENS,

PLAINTIFF,

v.

GENERAL MOTORS CORPORATION,

a Delaware corporation;

GENERAL MOTORS CORPORATION,

Plan Administrator, and

GM HOURLY-RATE EMPLOYEES PENSION

PLAN, an employee pension benefit plan,

DEFENDANTS.

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U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

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COMPLAINT

COMES NOW DELSIE E. BROOKENS (hereinafter "Plaintiff" or "DELSIE") and, by undersigned counsel, and as a cause of action against the above named Defendants, hereby alleges as follows:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. Section 1132(e)(1), the pendent jurisdiction of this Court, and under 28 U.S.C. Section 1331.

2. A copy of this Complaint has been served on the Secretary of Labor and the Secretary of Treasury of the United States by certified mail.

VENUE

3. Venue lies in the District of Delaware under 29 U.S.C. Section 1132(e)(2), and 28 U.S.C. Section 1391(b).

THE PARTIES

4. Plaintiff, Delsie E. Brookens, (hereinafter "Plaintiff" or "Delsie") is a resident of Delaware, and the spouse of a former employee of General Motors Corporation at its Wilmington, Delaware site.

5. Defendant General Motors Corporation, Inc. (hereinafter "Company") is a Delaware corporation having a business office in Wilmington, Delaware. The Company is an employer engaged in commerce or in an industry or activity affecting commerce within the meaning of Section 3(5), (11) and (12), Employee Retirement Income Security Act of 1974, ("ERISA"), 29 U.S.C. Sec. 1002(5), (11) and (12), and is the Plan Administrator for Defendant Plans herein. The Company is a fiduciary with respect to each Defendant Plan herein and, as to each beneficiary of each Plan, within the meaning of Section 3(21), ERISA, 29 U.S.C. Sec. 1002(21).

6. Defendant GM Hourly-Rate Employees Pension Plan together with its associated Trust (hereinafter "Pension Plan") is a defined benefit pension plan maintained by the Company and is a pension benefit plan described in Section 3(2) and (3), ERISA, 29 U.S.C. Sec. 1002(2) and (3). The Pension Plan is sponsored by

the Company as defined by Section 3(16), ERISA, 29 U.S.C. Sec. 1002(16), and is funded by a trust separate from the general assets of the Company.

### COMMON FACTS

7. Delsie is the divorced spouse of David I. Brookens (hereinafter "Brookens"), having been married to said David I. Brookens for 27 years. David I. Brookens was a former employee of the Company and at all times during his employment maintained the status of a full-time employee with the Company. His service with the Company totaled over 27 years.

8. The Company, as employer of Brookens, provided to him as a full-time hourly employee, and as part of his compensation package, various employee plan benefits in addition to his salary, including the benefits sought in this Complaint.

9. The Company, during its employment of Brookens, was the sponsor of, and presently is the sponsor of and does maintain the Pension Plan and was and is a fiduciary of each of the plan during Brookens' employment.

10. Brookens, as a full-time employee with in excess of fifteen years service with the Company, is/was a Participant in the Pension Plan and entitled to benefits as established by the terms of the plan document. The status of Elsie and Brookens to any other Defendant plans and benefits thereof is determined by, and is affected by, his status as Participant in the Pension Plan.

11. As a result of his death and the termination of his job thereby, as of March 28, 1992, this event caused the Plan to incur an obligation to pay Delsie a survivor benefit pursuant to her status as spouse as of the time Brookens died.

12. No payment was made to Delsie concurrent with the death of Brookens until the Company, as Plan Administrator, was advised by counsel for Delsie that she was the surviving spouse of Brookens. As a result of this advice, Company and the Pension Plan paid Delsie retroactive payments of \$25,221.23 on October 1, 2004, representing the monthly benefit due her from March 1, 1992.

13. Delsie, through counsel, applied for interest on delayed payments to the Plan Administrator but was advised that the Pension Plan did not provide for payments of interest on delayed payments. This advice was received by letter from the Company/Plan Administrator on July 19, 2005 advising of same.

14. When the Company failed to respond to all requests for further clarification of their desired information, to date, no response to that request has ever been made, nor has any other effort or communication with Delsie or counsel for Delsie been made to resolve an obvious error to recognize the decision of the Third Circuit Court of Appeals in Skretvedt v. Dupont, et.al., 372 3.rd 193 (3<sup>rd</sup> Cir.2004).

COUNT I - PENSION BENEFITS UNDER ERISA

DELSIE E. BROOKENS v. PENSION PLAN

15. The allegations in Paragraphs 1. through 14. are hereby incorporated by reference as if fully restated.

16. On information and belief the Pension Plan provides that an employee's spouse is entitled to a survivor benefit on death of the employee.

17. Delisie meets the status of surviving spouse and received as retroactive payment from the Pension Plan of \$25,221.23 as of October, 2004, representing payments due her as of March 1, 1992. Request was made to the Plan Administrator to pay Delsie an amount representing "interest" on said amount for the ensuing 12 and ½ half years. This request was refused by notice from the Plan Administrator dated November 5, 2004.

18. As a result of the refusal of the Plan Administrator to respond to Delsie's request for "interest" or other disgorgement of profits accrued to the Pension Plan over 12 and ½ half years, Delsie demands said amounts, together with costs and attorney's fees.

19. Delsie makes note here that said payments were made **voluntarily** by said Pension Plan/Plan Administrator as properly due but did not include any disgorgement of profits accrued by retention of properly due payments.

20. Delsie invokes this Court's jurisdiction under 29 U.S.C. Sec. 1132 (a)(1)(B), [Employee Retirement Income Security Act, Sec. 502 (a)(1)(B)] and 29 U.S.C. Sec. 1132(a)(3) to recover disgorgement of profits on benefits due her, to award her amounts due by virtue of the Company as Plan Administrator fiduciary retaining said benefits due her of any and all of profits, income and/or interest obtained by its retention of amounts of benefits not paid to Delsie timely according to the original death date of her spouse, and to enforce her rights under said Pension Plan and any other related Plans of the Company, and to clarify her rights to future awards under the theory of a disgorgement of profits process as determined by the Third Circuit decision in Skretvedt v. DuPont, et.al., 372 F.3d 193 (3<sup>rd</sup> Cir. 2004).

21. The Pension Plan as operated by its Plan Administrator denied Delsie her status of spouse of a pensioner by failing to find that she was the spouse of an employee entitled to have his spouse benefit from the survivor benefit, in violation of the terms of the Pension Plan and the Employee Retirement Income Security Act ("ERISA").

22. Delsie has previously exhausted the required administrative remedies of the Pension Plan and otherwise met the requirements of 29 U.S.C. Sec. 1133 (ERISA Sec. 503).



23. Prior discovery has not made known the profits, income, interest obtained by the Pension Plan, all in violation of Section 503, ERISA, 29 U.S.C. Sec. 1133, and as should be made known to a beneficiary of said plans by the fiduciary Company under the provisions of trust law embodied within ERISA and as required under the above Third Circuit decision in Skretvedt, Delsie hereby makes allegation that the Company, as fiduciary, has failed in its fiduciary duty to provide said information to date.

24. The Plan Administrator of the Pension Plan, as controlled by the Company, has exhibited bad faith and a conflict of interest in denying Delsie's entitlement to a disgorgement of profits from said Pension Plan and Trust.

25. The Company through its agents, officers and managers have exhibited bad faith and a conflict of interest toward Delsie in denying her claim for "interest" on her spousal benefits retained by said Company and Pension Plan employment by claiming said moneys are not named specifically as due under terms of the statement of benefits under provisions of the Pension Plan.

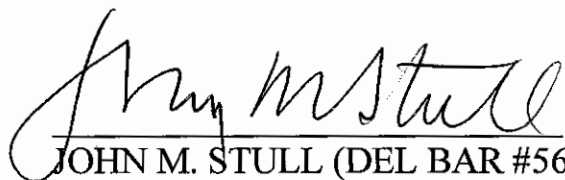
WHEREFORE, Plaintiff, Delsie E. Brookens, prays that Judgment be entered as follows:

(a) Against Defendant Pension Plan and the Company as Plan Administrator which have **voluntarily** declared that Delsie has met the spousal benefits requirements under provisions of the Pension Plan and is entitled to profits from the retained retirement benefits from the Pension Plan under the provisions of the Pension Plan;

(b) Against Defendant Pension Plan and the Company as Plan Administrator for profits and income accruing from retained benefits due Plaintiff and voluntarily paid as required under plan terms in her status as a surviving spouse of a pensioner from the date of death, together with prejudgment interest and post judgment interest on such income and profits from such benefits as are found due and owing from the due date for entitlement of payment until the date of actual payment, and reasonable attorneys' fees and costs incurred in this action and in connection with any proceedings to enforce or collect any judgment, and

(c) For such other or further relief, legal or equitable, as may be just, necessary and appropriate.



A handwritten signature in black ink, appearing to read "John M. Stull", is written over a horizontal line.

JOHN M. STULL (DEL BAR #568)  
1300 NORTH MARKET STREET,  
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P. O. BOX 1947  
WILMINGTON, DELAWARE 19899  
Ph. 302) 654-0399  
Attorney for Plaintiff

DATE: June 16, 2007

ORIGINAL

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

07-387

The JS 44 civil cover sheet and the information contained therein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Debie 2007 JUN 18 AM 9:39  
Brookens

(b) County of Residence of First Listed Plaintiff New Castle  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

P.M. STULL, 1300 N. Market St.  
Wilmington, DE 19801 302 6540399

## DEFENDANTS

General Motors Corp - Auto Pension Plan  
New Castle

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC §1001 et seq.

Brief description of cause: Fiduciary Breach of withheld pension

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 18, 2007

John M. Stull

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_